CITY OF FREDERICK ZONING BOARD OF APPEALS PROJECT STAFF REPORT

November 26, 2013

PROJECT INFORMATION

AGENDA ITEM:

C.

NAME OF PROJECT:

10 Clarke Place

TYPE OF PROJECT:

Conditional Use

CASE NUMBER:

ZBA13-760CU

OWNER:

Robert B. Gajewski & Monique A. Pasquale

PROJECT ADDRESS:

10 Clarke Place Monique Pasquale

APPLICANT:

252-599-0120

PHONE: ZONING:

R4 (Low Density Residential)

ZONING OVERLAY:

HPO (Historic Preservation Overlay)

REVIEW BY:

Jeffrey D. Love

DATE:

November 19, 2013

PROPOSED ACTION:

Applicant seeks approval for a conditional use to

operate a bed and breakfast/tourist house, according

to §809 of the Land Management Code.

EXHIBITS:

Ordinance G-13-23

Application with attachments

Parking Exhibit

BACKGROUND INFORMATION

The subject property is zoned low density residential, R4, and is within the Frederick Town Historic District Historic Preservation Overlay (HPO). The Property fronts on Clarke Place and abuts Lough Alley to the rear. The existing residence is 3,308 sf and the property area is 9,968 sf according to the State Department of Assessments and Taxation data. Residences are adjacent to the property to the south, east, and west and The Maryland School for the Deaf campus lies across Clarke Place to the north. Two (2) off street parking spaces are provided by access from Lough Alley.

The City recently approved an LMC Text Amendment to §809 Bed and Breakfast/Tourist Homes under Ordinance G-13-23. Prior to its passage, the subject application could not be approved due to its proximity to an existing bed and breakfast at 4 Clarke Place. Under the previous regulations, no more than one bed and breakfast was permitted within the same block and they could not be within five hundred (500) feet of each other outside

of the of the DB, DBO, or NC districts. The ordinance revised this requirement to also exclude any properties which lie in the HPO, thereby allowing this application to proceed. The ordinance has also provided the Zoning Board of Appeals (ZBA) the ability to modify the minimum parking standard for a bed and breakfast if reasonable mitigation or the existing character of the property or structure would be negatively affected by the provision of parking.

STAFF COMMENTS & ANALYSIS

Per Section 809(a) -- "Tourist homes or bed and breakfast homes are permitted as a conditional use in RO, R4,R6, R8, R12, R16, R20, PB, NC, DB, DR, DBO, and MU districts provided all of the standards established in subsection (b) are met."

Section 203(c) of the City of Frederick Land Management Code allows the Zoning Board of Appeals to authorize conditional uses included in Section 8 of the LMC only when the Board finds that <u>all</u> of the following conditions exist:

1. The proposed use is in harmony with the purpose and intent of the Comprehensive Plan and this Code.

Applicant Responds: Property will remain primarily a dwelling and is permitted under Section 809 in the LMC to be used as a Bed & Breakfast.

Staff responds: The subject property is zoned R4 (Low Density Residential) and lies within the HPO (Historic Preservation Overlay), where a bed and breakfast is permitted as a conditional use per Section 404, Table 404-1, *Use Matrix*. The 2010 Comprehensive Plan identifies the property within the Central Business District. The plan notes that the goal of this district is to contribute to the economic vitality of the City through the continued promotion of historic preservation, the arts, neighborhood amenities, and appropriate design. Additionally, the Economic Development Element policies recommend support for small business and entrepreneurs and enhancement of the Downtown's role as a hub of government, arts, culture, and commerce.

Based on the above, Staff finds that the establishment of bed and breakfast is consistent with the purpose and intent of both the Comprehensive Plan and the LMC.

2. The characteristics of the use and its operation on the property in question and in relation to adjacent properties will not create any greater adverse impact than the operation of any permitted use not requiring conditional use approval.

Applicant Responds: Applicant is in compliance with the regulations in Section 809. Applicant does not wish to change existing home appearance.

Staff responds: The uses which are otherwise permitted in the R4 district are strictly residential in nature so with regards to the characteristics of this use, it is anticipated to generate several impacts which may not otherwise occur. These may include

increased pedestrian and vehicular traffic as well as parking demand; however, based on the need for the Applicant to comply with all of the criteria for a bed and breakfast, Staff finds that the impacts of the proposed use are not intended to exceed those that are generated by other permitted uses.

3. That the proposed activity will comply with all conditions and requirements set forth in this Code, including any specific standards established in Article 809 of this Code.

Applicant responses are below.

a. The applicant must provide guarantees as deemed appropriate by the Board that the property is adequate for the proposed use and that the use of a particular property for a tourist home or bed and breakfast home will not constitute a nuisance because of increased vehicular traffic, noise, odor or any other activity associated with the use which may be disruptive to the residential character of the neighborhood.

Applicant Responds: The Applicant understands requirements and insures the board that use will not be disruptive to the residential character of the neighborhood. The applicant has resided in the property for 20 years and wants to maintain the character of the neighborhood. The maximum number of guests per room is to be two. The majority of guests will be accommodated on the weekend.

Staff responds: Based on the Applicant's responses, Staff believes that Applicant intends to provide a bed and breakfast home which will not constitute a nuisance.

b. Except as otherwise provided in this paragraph, the Board may not approved a bed and breakfast home or tourist home on the same block as, or closer than five hundred (500) feet to, another bed and breakfast or tourist home. This distance shall be measured along the street frontage from the closest property line between the subject properties. A bed and breakfast home or tourist home proposed to be located in the NC, DB, or DBO district, or in any other district within the Historic Preservation Overlay District, is subject to the limitation of this paragraph.

Applicant responds: The property lies within the HPO and is in compliance with the requirement.

Staff responds: The property lies within the HPO district and therefore, is not subject to the restriction.

c. The property owner shall reside at the subject property.

Applicant Responds: The property owner will reside at the subject property.

Staff responds: The Applicant is in compliance with the requirement. The Applicant is identified as the owner and the property is noted as the primary residence on the State Department of Assessments and Taxation datasheet.

d. There shall be no exterior evidence that a building is being used for any purpose other than a residence except for one permitted sign of no more than two (2) square feet.

Applicant Responds: The property owner understands that there will be no evidence of bed and breakfast other than a 2 square foot sign which is permitted. The owner also understands that this sign if used must be approved by the HPC.

Staff responds: Based on the Applicant's responses, Staff believes that Applicant intends to comply with the requirement.

e. Off-street parking shall be provided; one (1) space per guest room. In no shall be parking be provided in the front yard. All parking areas must be adequately screened as required by §605 of this Code. The Board may approve modified parking requirements if reasonable mitigation is provided or if the existing character of the structure or site would be negatively impacted by the provision of parking in accordance with this subsection.

Applicant Responds: The owner intends to provide parking for 2 cars in the rear of the property. This is in keeping with the new code to not destroy downtown green space. See site map. To meet compliance there is ample street parking as all the residents have access to off street parking in Lough Alley. This allows for many spaces of on street parking for guests (located on Clarke Place). Most homes on the street are single family so that parking is not high density. In addition the parking that is available on street has no residential restrictions. Please see street photos attached. Across the street The Maryland School for the Deaf is located and has parking.

Staff responds: The Applicant will be offering two (2) rooms for rent resulting in a requirement of two (2) additional parking spaces in addition to the two (2) spaces necessary for a single-family dwelling. The site currently provides two off-street parking spaces.

The Applicant is seeking a modification from the Board to allow two (2) of the required spaces to be accommodated through the use of on street parking. In order to provide the four (4) unobstructed parking spaces on site, the Applicant would have to extend the driveway and create a parking area farther into the interior of the property or request the demolition of an existing garage.

The Applicant has provided photographs of Clarke Place at different times throughout the end of October to demonstrate the availability of parking on the street. Staff also made visits to the site at varying times to confirm the availability of parking in the vicinity of the subject property. On street parking is indeed available, although it is limited during the work/school hours due to the proximity of The Maryland School for the Deaf. However, it is apparent that the majority of the parking is directly associated with the school and some other downtown area employers and is not associated with residences in the area as the residential street to the south, Mt. Olivet Blvd., was mostly devoid of parked cars. Additionally, Clarke Place has an abundance of on street parking available during the weekends at which time bed and breakfasts customarily have the most visitors.

Due to the location of the property within the HPO, the alterations necessary to provide additional off street parking, and the availability of on street parking in the vicinity of the proposed use, Staff is supportive of a modification to the parking requirement for this application.

f. Bed and breakfast homes shall not be used, leased or rented for business or wedding reception activities.

Applicant Responds: The applicant understands the requirement and will not use the facility as such.

Staff responds: Based on the Applicant's responses, Staff believes that Applicant intends to comply with the requirement.

g. Breakfast is the only meal that may be served to guests, and it must not be served to any other paying nonresident of the premises. No separate cooking areas shall be maintained other than the main kitchen.

Applicant Responds: The applicant intends to only serve breakfast to paying guests. There will be no other facilities for guests use.

Staff responds: Based on the Applicant's responses, Staff believes that Applicant intends to comply with the requirement.

h. A paying guest must not remain in a bed and breakfast lodging for more than fourteen (14) days within a thirty (30) day period.

Applicant Responds: The applicant understands the no guest can stay longer than 14 days within a 30 day period.

Staff responds: Based on the Applicant's responses, Staff believes that Applicant intends to comply with the requirement.

i. In order to preclude adverse neighborhood impact, the Zoning Board of Appeals may limit the number of occupants per room.

Applicant Responds: There will be a maximum of 2 guests per room.

Staff responds: Staff finds the number of occupants to be typical of standard occupants for hotel/motel and is reasonable for the conditional use. Staff would like the Applicant to verify that there wouldn't be circumstances where two adults with a child might stay in a single room. This clarification may avoid some unintentional violation of the approval in the future. Staff would suggest that no more than two occupants over the age of 18 be permitted per room.

j. The owner of the premises must maintain a register of all paying guests listing the guests' names; dates of arrival and departure; room number and number of occupants per room. If requested this register must be made available to appropriate city officials.

Applicant Responds: The owner will maintain a log with guests' names, arrival and departure dates and number of occupants per room. The owner will also make this available to the city if requested.

Staff responds: Based on the Applicant's responses, Staff believes that Applicant intends to comply with the requirement.

Lastly, as described in Section 312(e) of the LMC, in the decision making process the Zoning Board of Appeals should consider the following to the extent that they apply to the application:

- 1) The purpose, application, interpretation and standards of the LMC;
- 2) The applicable standards established in Articles 8 and 9 of the LMC;
- 3) The applicable legal standards;
- 4) The orderly growth and improvement of the neighborhood and the community;
- 5) The most appropriate use of land and structures in accordance with the Comprehensive Plan;
- 6) Facilities for sewer, water, transportation, and other services and the ability of the City/County to supply these services;
- 7) The limitations of firefighting equipment and means of access for fire and police protection;
- 8) The effect of such use on the peaceful enjoyment of people in their homes
- 9) The number of people residing, working, or studying the in the immediate area in order to prevent overcrowding or overconcentration of similar uses;

- 10) The type, character, and use of structures in the vicinity especially where people are apt to gather in large numbers such as schools, churches, theaters, hospitals and the like;
- 11) Traffic conditions including pedestrian facilities and parking facilities;
- 12) The preservation of cultural and historic landmarks;
- 13) The conservation of property values;
- 14) The effect of odors, dust gas smoke fumes vibration glare or noise on surrounding properties;
- 15) The contribution that the building, use or addition would make to towards the deterioration of areas and neighborhoods;
- 16) The objectives of the forest conservation ordinance.

STAFF RECOMMENDATION

FINDINGS OF FACT

- The subject property is located in the R4 zoning district as well as the Frederick Town Historic District Historic Preservation Overlay.
- The subject property is currently an owner-occupied, single family residence.
- The Applicant has requested approval of a conditional use to allow for the establishment of a bed and breakfast.
- The Zoning Board of Appeals may authorize a bed and breakfast/tourist home as a conditional use per Section 404, Table 404-1 of the LMC, entitled the Use Matrix, pending a finding of compliance with the applicable criteria established in Sections 308, 312, and 809 of the LMC.
- The 2010 Comprehensive Plan identifies the property within the Central Business District. The Plan notes that the goal of this district is to contribute to the economic vitality of the City through the continued promotion of historic preservation, the arts, neighborhood amenities, and appropriate design.
- The Applicant is offering two (2) guest rooms for rent.
- The Applicant has requested modification of two (2) parking spaces to the offstreet parking requirements in accordance with §809(b)(5).
- The Applicant has adequately demonstrated the availability of on street parking as mitigation for the required off street parking.
- The addition of two (2) additional off street parking spaces would negatively impact the existing character of the property and/or would require the demolition of an existing structure.
- No more than two (2) occupants over the age of 18 are permitted per guest room.

STAFF RECOMMENDATION

Based upon the findings of fact, Staff recommends approval of the conditional use request for a bed and breakfast/tourist home finding that:

- 1. The policies and regulations found in both the 2010 Comprehensive Plan and the Land Management Code (LMC) support the use of the property as a bed and breakfast.
- 2. The characteristics of the bed and breakfast/tourist home and its operation on the property in question may create additional impacts such as increase pedestrian or vehicular traffic and parking needs; however, compliance with the criteria established under Section 809 of the LMC will ensure that the proposed use will not create a greater adverse impact than any use permitted by right in the R4 district.
- 3. The proposed use of the property complies with the provisions of Article 8, Section 809 entitled *Bed and Breakfast/Tourist Homes* based on the following:
 - a. The property is adequate for the proposed use and the use of the property for a bed and breakfast will not constitute a nuisance because of increased vehicular traffic, noise, odor or any other activity associated with the use.
 - b. The property lies within the HPO (Historic Preservation Overlay) and therefore, is not limited by the number of bed and breakfast/tourist homes in the vicinity or the proximity to another bed and breakfast/tourist home.
 - c. The property owner resides at the subject property.
 - d. There will be no exterior evidence of the bed and breakfast/tourist home other than a two (2) square foot sign.
 - e. The Applicant has adequately demonstrated that a modification to the parking requirements is warranted and that available on street parking in the area is adequate to mitigate the reduction in off street parking.
 - f. The Applicant has provided guarantees that the property will not be used, leased, or rented for business or wedding reception activities.
 - g. The Applicant has indicated that breakfast will be the only meal served to guests and that it will not be served to any other paying nonresident of the premises.
 - h. The Applicant has provided guarantees that no paying guest will remain in the bed and breakfast for more than fourteen (14) days within a thirty (30) day period.
 - i. Only two (2) guests over the age of 18 will be permitted per guest room associated with the bed and breakfast.
 - j. The Applicant has indicated that they will maintain a register of all paying guests listing the guests' names, dates of arrival and departure, room number and number of occupants per room. Said register will be made available to appropriate city officials upon request.

With the following conditions of approval:

1. In accordance with Section 312(g), the Applicant must apply for and receive a zoning certificate lawfully establishing the use of a bed and breakfast/tourist home within 2 years of the approval or the approval shall become void.

THE CITY OF FREDERICK MAYOR AND BOARD OF ALDERMEN

ORDINANCE NO: G-13-23

LEGISLATIVE HISTORY

PLANNING COMMISSION

PUBLIC HEARING:

August 12, 2013

RESOLUTION SUBMITTED

TO MAYOR & BOARD:

September 16, 2013

MAYOR & BOARD OF ALDERMEN

WORKSHOP:

September 18, 2013

PUBLIC HEARING:

October 3, 2013

AN ORDINANCE concerning

Bed and breakfast homes and tourist homes

FOR the purpose of eliminating a certain limitation on the permitted number of bed and breakfast homes and tourist homes in the Historic Preservation Overlay District and for amending the minimum parking requirements.

BY repealing and reenacting, with amendments,

Section 809
Appendix A, "Land Management Code"
The Code of The City of Frederick, 1966 (as amended)

SECTION 1. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that Section 417 of the Land Management Code, Appendix A of The Code of The City of Frederick, 1966 (as amended), be repealed and reenacted, with amendments, as follows:

Sec. 809 BED AND BREAKFAST/TOURIST HOMES

- (a) ***
- (b) ***
 - (1) ***
 - (2) Except [within NC, DB, and DBO districts,] as otherwise provided in this paragraph, [no more than one such use shall be permitted per] the Board

may not approve a bed and breakfast home or tourist home on the same block as, or closer than five hundred (500) feet [to] to, another [such use.] bed and breakfast or tourist home. This distance shall be measured along the street frontage from the closest property line between the subject properties. A bed and breakfast home or tourist home proposed to be located in the NC, DB, or DBO district, or in any other district within the Historic Preservation Overlay District, is not subject to the limitation of this paragraph.

(3)	***

- (4) ***
- (5) Except as otherwise provided in this subsection (b)(5), [Off-street] off-street parking shall be provided[;] at a rate of one (1) space per guest room. In no case shall parking be provided in a front yard. All parking areas must be adequately screened as required by §605 of this Code. The Board may approve modified parking requirements if reasonable mitigation is provided or if the existing character of the structure or site would be negatively impacted by the provision of parking in accordance with this subsection.

.;

- (6) ***
- (7) ***
- (8) ***
- (9) ***
- (10) ***

SECTION 3. In the event any provision, section, sentence, clause, or part of this ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause, or part of this ordinance, it being the intent of the City that such remainder shall be and shall remain in full force and effect.

SECTION 4. This ordinance shall take effect on October 13, 2013 and all other ordinances or parts of ordinances inconsistent with the provisions of this ordinance will as of that date be repealed to the extent of such inconsistency.

Note: <u>Underlining</u> indicates material added. [Brackets] indicates material deleted. *** indicates no change.

APPROVED: October 3, 2013

Randy McClement, Mayor

PASSED: October 3, 2013

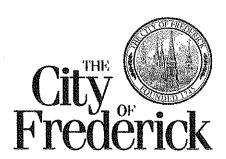
Randy McClement President,

Board of Aldermen

Approved for Legal Sufficiency:

City Attorney

7



For Offici	al Use Only	
ZBA Case Number:		
Hearing Date:		
Ad Date:		
Amount Paid:	\$	
Date Paid:		

Planning Department * 140 W. Patrick Street * Frederick, Maryland 21701 * 301.600.1499

ZONING BOARD OF APPEALS CONDITIONAL USE APPLICATION

Please legibly print or type the following application in its entirety. Incomplete applications will not be accepted. **Submit the twelve (12) copies** of this application, and any supporting information, along with appropriate fees, by 4:30 pm on the application deadline date.

APPLICANT INFORMATION - OWNER'S AF	FFIDAVIT MUST BE SUBMITTED WITH APPLICATION.	
Contact Name: MONIQUE PASQUALE		
Firm/Company:		
Address: 10 CLARKE PIACE	Frederick md 21701	
Phone: 252 5990 /20	email: Monique pasquale @ (mail.e	
OWNER INFORMATION		
Name: SAME		
Firm/Company:		
Address:		
Phone:	email:	
TYPE OF CONDITIONAL USE		
Please complete the appropriate section.	171	
Home Occupation	Name of Business:	
LMC Section 829		
	Type of Business:	
	Description of Desirons	
	Description of Business:	
Other	Name of Use:	
LMC Section 8 0 9	Name of Osc.	
Line Section 60-7		
	Type of Use: Bed & Breakfast	
	Ded & Dalaktast	
	Description of Use:	
	Use of my originary Residente	
	Use of my primary residence AS Beal & Break fast	
	LO DECK & L2 KRUE LAS!	

Rev. 2/11/08

Quality Planning for The City of Frederick

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PROJECT INFORMATION				
Project Location: 10 Clarke (Street Address)	Place			
Current Zoning:				
Current Use: Primary R	esidence	90 miles		
FEES				
Type of Review	Fee	Total		
Conditional Use Home Occupation	\$100.00			
All other Conditional Uses	\$650.00	650		
JUSTIFICATION FOR CONDIT	TIONAL USE			
LMC Section 308(c) states that "The 2 when the Board finds that the followin (Please respond to each conditi	Zoning Board of Appeals may aut g conditions exist." on statement in the area provided - use additi	ional paper if necessary.)		
1. The proposed use is in harmony wi	th the purpose and intent of the C	Comprehensive Plan and this		
Code. Property will re is permitted under se	MAIN DEIMARY D	welling and		
13 permilled under se	cotion 809 un des L	mc to be used		
as a Bed & Breck	AST			
2. The characteristics of the use and its operation on the property in question and in relation to adjacent properties will not create any greater adverse impact than the operation of any permitted use not requiring conditional use approval. Application is in compliance will Regulation Section 809. Application Bors not wish to change ensighing				
•				
3. That the proposed activity will comply with all conditions and requirements set forth in this code, including any specific standards established in Article 8 of this Code (see 1-6 below for home occupations).				
occupations). See Responses to sec 809 Criteria.				
FOR HOME OCCUPATION APPLI	CATIONS ONLY:			
LMC Section 829(c) states that "Home occupations are permitted as a conditional use in				
all R, all D, NC and GC districts if all of the following conditions and requirements are				
met;" (Please respond to each condition statement in the a	rea provided - use additional paper if necesso	ary.)		
(1) The applicant must provide gu constitute a nuisance because	parantees that the use of a propert of increased pedestrian or vehicu dwelling for business purposes w	y as a home occupation will not lar traffic, noise, or other activity		
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(2) A home occupation must be secondary to the residential use of the property and shall be conducted totally within the dwelling. Not more than 20 percent of the floor area of the dwelling or 300 square feet, whichever is greater, may be devoted to a home occupation.
(3) Only one (1) person who is not a resident of the dwelling may be employed/work/volunteer on site in conduct of a home occupation.
(4) A home occupation may not result in any external evidence that a building is being used for any purpose other than a dwelling.
(5) Except for the permitted employee who may be employed, a home occupation may result in no vehicular traffic, except for a maximum of one (1) daily local home delivery from services such as UPS or FedEx, and in no case shall result in delivery by tractor trailer trucks.
(6) If deemed appropriate, the Board may permit a home occupation for a specified period of time with
periodic review and approval required to ensure conformity with the conditions and requirements.

I hereby attest that the information provided on and attached to this application is complete and correct.

Signature of Applicant/Agent

MONIQUE PASQUALE

October 14,2013

City of Frederick Zoning Board of Appeals 140 W Patrick St. Frederick, MD 21701

City of Frederick Application for Monique Pasquale Bed and Breakfast Submittal 10/15 Hearing 11/26

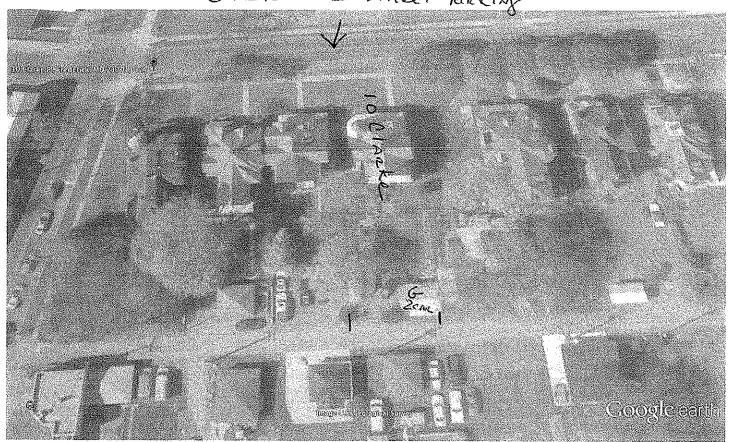
Response to LMC under Sec. 809 Bed and Breakfast section B standards:

- (1) The applicant understands requirements and insures the board that use will not be disruptive to the residential character of the neighborhood. The applicant has resided in the property for 20 years and wants to maintain the character of the neighborhood. The maximin number of guests per room is to be two. The majority of guests will be accommodated on the weekend.
- (2) The property lies within the HPO and is in compliance with the requirement.
- (3) The property owner will reside at the subject property.
- (4)The property owner understands that there will be no evidence of bed and breakfast other than a 2 square foot sign which is permitted. The owner also understands that this sign if used must me approved by the HDC.
- (5)The owner intends to provide parking for 2 cars in the rear of the property. This is in keeping with the new code to not destroy downtown green space. See site map. To meet compliance there is ample street parking as all the residents have access to off street parking in Lough Alley. This allows for many spaces of on street parking for guests (located on Clarke Place). Most homes on the street are single family so that parking is not high density. In addition the parking that is available on street has no residential restrictions. Please see street photos attached. Across the street The Maryland School for the Deaf is located and has and has parking.
- (6) The applicant understands the requirement and will not use the facility as such.
- (7)The applicant intends to only serve breakfast to paying guests. There will be no other kitchen facilities for guests use.
- (8)The applicant understands that no guest can stay longer than 14 days within a 30 day period.
- (9) There will be a maximum of 2 guests per room.
- (10)The owner will maintain a log with guests names, arrival and departure dates and number of occupants per room. The owner will also make this available to the city if requested.

Sincerely yours,

Monique Pasquale

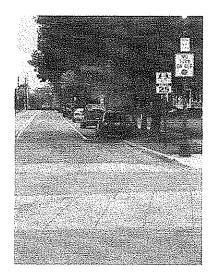
Clarke Place Street Parting



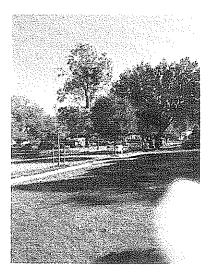
Google earth

feet 100 meters 60

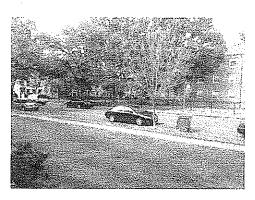
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Monday Oct 14th PM



Monday Oct. 14th AM



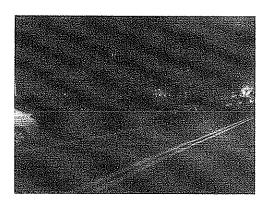
Friday Oct. 18th 2013 AM



Saturday Oct. 19th PM



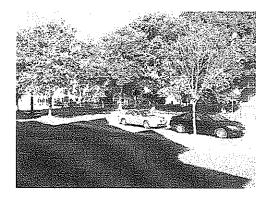
Sunday Oct. 20th AM



Wednesday Oct. 30th PM



Tuesday Oct. 15th PM



Tuesday Oct. 15th AM